

HAMPDEN SUPERIOR COURT
Case Summary
Civil Docket

HDCV2005-00462
Malke v Transcontinental Refrigerated Lines, Inc.

File Date	05/04/2005	Status	Disposed: transferred to other court (dtrans)		
Status Date	07/05/2005	Session	A - Civil A - CtRm 6		
Origin	1	Case Type	B03 - MV negligence/pers injury/prop dmg		
Lead Case		Track	F		
Service	08/02/2005	Answer	10/01/2005	Rule12/19/20	10/01/2005
Rule 15	10/01/2005	Discovery	02/28/2006	Rule 56	03/30/2006
Final PTC	04/29/2006	Disposition	06/28/2006	Jury Trial	Yes

PARTIES

Plaintiff
Steven J Malke
Active 05/04/2005

Private Counsel 546211
John D Ross III
Ross & Ross
121 State Street
Suite 201
Springfield, MA 01103
Phone: 413-736-2725
Fax: 413-736-1247
Active 05/04/2005 Notify

Defendant
Transcontinental Refrigerated Lines, Inc.
Served: 06/13/2005
Answered: 06/23/2005
Answered 06/23/2005

Private Counsel 641440
Tracy L Davis
Meyer Connolly Sloman & Macdonald
12 Post Office Square
Boston, MA 02109
Phone: 617-423-2254
Fax: 617-426-4687
Active 06/23/2005 Notify

Private Counsel 550058
Andrew J Fay
Tobin Sullivan & Fay
Wellesley Office Park
60 William Street
Wellesley, MA 02481
Phone: 781-237-0877
Fax: 781-237-1101
Active 06/23/2005 Notify

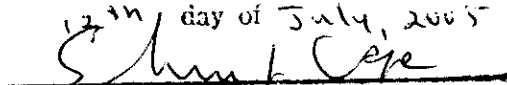
ENTRIES

Date	Paper	Text
05/04/2005	1.0	Complaint & civil action cover sheet filed
05/04/2005		Origin 1, Type B03, Track F.
05/26/2005	2.0	Amended complaint of Steven J Malke
06/20/2005	3.0	Affidavit of compliance with long-arm statute with proof of service on out of state defendant Transcontinental Refrigerated Lines, Inc.
06/23/2005	4.0	ANSWER: Transcontinental Refrigerated Lines, Inc.(Defendant) TO
07/05/2005	5.0	Case REMOVED this date to US District Court of Massachusetts with pleading 1 - 4 .

EVENTS

Commonwealth of Massachusetts
HAMPDEN SUPERIOR COURT
Case Summary
Civil Docket

HDCV2005-00462
Malke v Transcontinental Refrigerated Lines, Inc.

A TRUE COPY
OF THE DOCKET MINUTES
IN WITNESS WHEREOF, I hereunto
set my hand, and have caused the seal
of the Superior Court for the County
of Hampden to be affixed on this
12th day of July, 2005

Deputy Assistant Clerk

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO: 05-462

HAMPDEN COUNTY
SUPERIOR COURT
FILED
MAY - 4 2005

STEVEN J. MALKE,
Plaintiff

v.

TRL, INC.,
Defendant

COMPLAINT AND
DEMAND FOR JURY TRIAL

1. The Plaintiff, Steven J. Malke, is a natural individual who resides at 59 College Street, Chicopee, Hampden County, Massachusetts.
2. The Defendant, TRL, Inc., is a Massachusetts corporation with a principal place of business at 1482 Fall river Avenue, Seekonk, Bristol County, Massachusetts.
3. On or about March 29, 2004, at approximately 11:30 a.m., the Plaintiff, Steven J. Malke was in the course of his employment as a truck driver for Estes Express Lines, New Lombard Road, Chicopee, Massachusetts.
4. At the above stated time, the Plaintiff was stopped at the STAPLES located at 70 Community Avenue, Plainfield, Connecticut and was inside the trailer of his truck.
5. At the above stated time and place George Kozloski was operating a tractor trailer as an agent, servant or employee of the Defendant, TRL, Inc., while in the course of his employment, in such a careless and negligent manner that he caused the Defendant's tractor trailer to collide with the motor vehicle that contained the Plaintiff.
6. As a direct and proximate result of the negligence of the Defendant's agent, servant or employee, the Plaintiff, Steven J. Malke was seriously and permanently injured, suffered and continues to suffer great pain of body and mind, required medical treatment and was prevented from performing his usual activities.

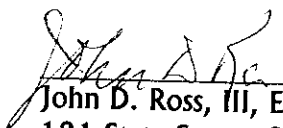
WHEREFORE, the Plaintiff, Steven J. Malke, demands judgment against the Defendant, TRL, Inc., in an amount to be determined by a jury plus interest and costs.

The Plaintiff demands a trial by jury on all issues.

FILED
Fee Paid - \$ 240.00 - Cash - CHECK
Surcharge Paid - \$ 15.00 - Cash - CHECK
Security Fee - Paid - \$ 30.00 - Cash - CHECK
Received by: HES


The Plaintiff,
By His Attorney,

Date: 4/28/05


John D. Ross, III, Esquire
121 State Street, Suite 201
Springfield, MA 01103
(413) 736-2725
(413) 736-1247 (fax)
BBO No: 546211

A true copy:

Attest:


Deputy Assistant Clerk

CIVIL ACTION
COVER SHEET

05. 462

Il Court of Massachusetts
Superior Court Department
County: HAMPDEN

PLAINTIFF(S)

STEVEN J. MALKE

DEFENDANT(S)

TRL, INC.

ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE 413-736-2725
John D. Ross, III
121 State St., Springfield, MA 01103
Board of Bar Overseers number: 546211

ATTORNEY (if known)

Origin code and track designation

Place an x in one box only:

- ☒ 1. F01 Original Complaint
☐ 2. F02 Removal to Sup.Ct. C.231,s.104 (Before trial) (F)
☐ 3. F03 Retransfer to Sup.Ct. C.231,s.102C (X)
☐ 4. F04 District Court Appeal c.231, s. 97 & 104 (After trial) (X)
☐ 5. F05 Reactivated after rescript; relief from judgment/Order (Mass.R.Civ.P. 60) (X)
☐ 6. E10 Summary Process Appeal (X)

CODE NO.

B03

TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)

TYPE OF ACTION (specify) TRACK
Motor Vehicle Negligence

IS THIS A JURY CASE?

personal injuru (F) (X) Yes () No

The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS

(Attach additional sheets as necessary)

- A. Documented medical expenses to date: **FILED**
1. Total hospital expenses \$773.37
2. Total Doctor expenses \$5966.00
3. Total chiropractic expenses \$0
4. Total physical therapy expenses \$2000.00
5. Total other expenses (describe) Surgery & MRI \$7203.22
Subtotal \$15,942.59
- B. Documented lost wages and compensation to date \$26,933.43+
- C. Documented property damages to date \$unknown
- D. Reasonably anticipated future medical and hospital expenses \$unknown
- E. Reasonably anticipated lost wages \$unknown
- F. Other documented items of damages (describe) \$unknown
- G. Brief description of plaintiff's injury, including nature and extent of injury (describe) \$.....
- As a result of the Defendant and or defendant's agent the Plaintiff sustained injuries to his right shoulder, including right shoulder arthroscopic acromioplasty and distal clavicle excision. **TOTAL \$400,000.00**

A true copy. CONTRACT CLAIMS

(Attach additional sheets as necessary)

Attest:

Deputy Assistant Clerk

TOTAL \$.....

PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT

"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."

Signature of Attorney of Record

DATE: 7/28/05

CIVIL ACTION COVER SHEET INSTRUCTIONS

SELECT CATEGORY THAT BEST DESCRIBES YOUR CASE

CONTRACT

01 Services, labor and materials (F)
 02 Goods sold and delivered (F)
 03 Commercial Paper (F)
 08 Sale or lease of real estate (F)
 12 Construction Dispute (A)
 99 Other (Specify) (F)

TORT

03 Motor Vehicle negligence-
 personal injury/property damage (F)
 04 Other negligence-personal
 injury/property damage (F)
 05 Products Liability (A)
 06 Malpractice-medical (A)
 07 Malpractice-other(Specify) (A)
 08 Wrongful death,G.L.c.229,s2A (A)
 15 Defamation (Libel-Slander) (A)
 19 Asbestos (A)
 20 Personal Injury-Slip&Fall (F)
 21 Environmental (A)
 22 Employment Discrimination (F)
 29 Other (Specify) (F)

REAL PROPERTY

C01 Land taking (eminent domain) (F)
 C02 Zoning Appeal, G.L. c.40A (F)
 C03 Dispute concerning title (F)
 C04 Foreclosure of mortgage (X)
 C05 Condominium lien and charges (X)
 C99 Other (Specify) (F)

EQUITABLE REMEDIES

D01 Specific performance of contract (A)
 D02 Reach and Apply (F)
 D06 Contribution or Indemnification (F)
 D07 Imposition of Trust (A)
 D08 Minority Stockholder's Suit (A)
 D10 Accounting (A)
 D12 Dissolution of Partnership (F)
 D13 Declaratory Judgment G.L.c.231A (A)
 D99 Other (Specify) (F)

MISCELLANEOUS

E02 Appeal from administrative (X)
 Agency G.L. c. 30A
 E03 Action against Commonwealth
 Municipality, G.L. c.258 (A)
 E05 All Arbitration (X)
 E07 c.112,s.12S (Mary Moe) (X)
 E08 Appointment of Receiver (X)
 E09 General contractor bond,
 G.L. c.149,s.29,29a (A)
 E11 Workman's Compensation (X)
 E14 Chapter 123A Petition-SDP (X)
 E15 Abuse Petition, G.L.c.209A (X)
 E16 Auto Surcharge Appeal (X)
 E17 Civil Rights Act, G.L.c.12,s.11H (A)
 E18 Foreign Discovery proceeding (X)
 E96 Prisoner Cases (F)
 E97 Prisoner Habeas Corpus (X)
 E99 Other (Specify) (X)

TRANSFER YOUR SELECTION TO THE FACE SHEET.

EXAMPLE:

CODE NO.	TYPE OF ACTION (SPECIFY)	TRACK	IS THIS A JURY CASE?
B03	Motor Vehicle Negligence-Personal Injury	(F)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

SUPERIOR COURT RULE 29

STATEMENT OF THE PLAINTIFF. The plaintiff or his/her counsel shall set forth, on the face sheet (or attach additional sheets as necessary), a statement specifying in full and itemized detail the facts upon which the plaintiff then relies as constituting money damages. A copy of such civil action cover sheet, including the statement as to the damages, shall be served on the defendant together with the complaint. If a statement of money damages, where appropriate is not filed, the Clerk-Magistrate shall transfer the action as provided in Rule 29(5)(C).

STATEMENT OF THE DEFENDANT. Should the defendant believe the statement of damages filed by the plaintiff in any respect inadequate, he or his counsel may file with the answer a statement specifying in reasonable detail the potential damages which may result should the plaintiff prevail. Such statement, if any, shall be served with the answer.

A CIVIL ACTION COVER SHEET MUST BE FILED WITH EACH COMPLAINT, BUFF COLOR PAPER.

92 :11 V 4 - 10W 500Z
 2005 MAY - 4 11:26
 FAILURE TO COMPLETE THIS COVER SHEET THOROUGHLY AND ACCURATELY
 MAY RESULT IN DISMISSAL OF THIS ACTION.

HAMPDEN COUNTY
 SUPERIOR COURT
 CLERKS OFFICE

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

HAMPDEN COUNTY SUPERIOR COURT DEPARTMENT
SUPERIOR COURT CIVIL ACTION NO: 05 462
FILED

MAY 26 2005

STEVEN J. MALKE,
Plaintiff

James J. Magg
CLERK-MAGISTRATE

v.

AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL

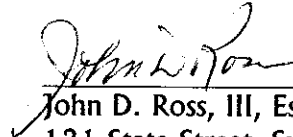
TRANSCONTINENTAL REFRIGERATED
LINES, INC.,
Defendant

1. The Plaintiff, Steven J. Malke, is a natural individual who resides at 59 College Street, Chicopee, Hampden County, Massachusetts.
2. The Defendant, Transcontinental Refrigerated Lines, Inc., is a corporation which regularly does business in the Commonwealth of Massachusetts with a principle place of business at 310 Scranton Electric Building, Scranton, Pennsylvania.
3. On or about March 29, 2004, at approximately 11:30 a.m., the Plaintiff, Steven J. Malke, was in the course of his employment as a truck driver for Estes Express Lines, New Lombard Road, Chicopee, Massachusetts.
4. At the above stated time, the Plaintiff was stopped at the STAPLES located at 70 Community Avenue, Plainfield, Connecticut and was inside the trailer of his truck.
5. At the above stated time and place George Kozloski was operating a tractor trailer as an agent, servant or employee of the Defendant, Transcontinental Refrigerated Lines, Inc., while in the course of his employment, in such a careless and negligent manner that he caused the Defendant's tractor trailer to collide with the motor vehicle that contained the Plaintiff.
6. As a direct and proximate result of the negligence of the Defendant's agent, servant or employee, the Plaintiff, Steven J. Malke was seriously and permanently injured, suffered and continues to suffer great pain of body and mind, required medical treatment and was prevented from performing his usual activities.

WHEREFORE, the Plaintiff, Steven J. Malke, demands judgment against the Defendant, Transcontinental Refrigerated Lines, Inc., in an amount to be determined by a jury plus interest and costs.

The Plaintiff,
By His Attorney,

Date: 5/25/05


John D. Ross, III, Esquire
121 State Street, Suite 201
Springfield, MA 01103
(413) 736-2725
(413) 736-1247 (fax)
BBO No: 546211

A true copy:

Attest:


Deputy Assistant Clerk

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 05 462

STEVEN J. MALKE,
Plaintiff,

v.

TRANSCONTINENTAL REFRIGERATED
LINES, INC.,
Defendants

AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL

The Plaintiff, Steven J. Malke, as a matter of course and in accordance with Rule 15(a) of the Massachusetts Rules of Civil Procedure, amends the Complaint in this action so that the same will read as attached:

**CIVIL ACTION
COVER SHEET**

DOC NO.(S)

05 462

Court of Massachusetts
Superior Court Department
County: HAMPDEN

PLAINTIFF(S)

STEVEN J. MALKE

DEFENDANT(S)

TRANSCONTINENTAL REFRIGERATED LINES, INC

ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE 413 736-2725

John D. Ross, III
121 State St., Springfield, MA 01103

Board of Bar Overseers number: 546211

ATTORNEY (if known)

Origin code and track designation

Place an x in one box only:

- ☒ 1. F01 Original Complaint
- ☐ 2. F02 Removal to Sup.Ct. C.231,s.104 (Before trial) (F)
- ☐ 3. F03 Retransfer to Sup.Ct. C.231,s.102C (X)
- ☐ 4. F04 District Court Appeal c.231, s. 97 & 104 (After trial) (X)
- ☐ 5. F05 Reactivated after rescript; relief from judgment/Order (Mass.R.Civ.P. 60) (X)
- ☐ 6. E10 Summary Process Appeal (X)

TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)

CODE NO.

B03

TYPE OF ACTION (specify) TRACK
Motor vehicle Negligence
personal injury (F)

IS THIS A JURY CASE?

(X) Yes () No

The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS

(Attach additional sheets as necessary)

A. Documented medical expenses to date:

- | | |
|--|-----------------------|
| 1. Total hospital expenses | \$ 773.37 |
| 2. Total Doctor expenses | \$ 5966.00 |
| 3. Total chiropractic expenses | \$ 0 |
| 4. Total physical therapy expenses | \$ 2000.00 |
| 5. Total other expenses (describe) | \$ 7203.22 |
| | Subtotal \$ 15,942.59 |
| B. Documented lost wages and compensation to date | \$ 26,933.43 + |
| C. Documented property damages to date | \$ unknown |
| D. Reasonably anticipated future medical and hospital expenses | \$ unknown |
| E. Reasonably anticipated lost wages | \$ unknown |
| F. Other documented items of damages (describe) | \$ |

Subtotal \$ 15,942.59

\$ 26,933.43 +

\$ unknown

\$ unknown

\$ unknown

\$

As a result of the Defendant and/or Defendant's agent, the Plaintiff sustained injuries to his right shoulder, including right shoulder arthroscopic acromioplasty and distal clavicle excision.

TOTAL \$ 400,000.00

CONTRACT CLAIMS

(Attach additional sheets as necessary)

Provide a detailed description of claim(s):

TOTAL \$

PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT

"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."

Signature of Attorney of Record

John D. Ross

DATE: 5/28/05

CIVIL ACTION COVER SHEET INSTRUCTIONS

SELECT CATEGORY THAT BEST DESCRIBES YOUR CASE

CONTRACT

01 Services, labor and materials (F)
 02 Goods sold and delivered (F)
 03 Commercial Paper (F)
 08 Sale or lease of real estate (F)
 12 Construction Dispute (A)
 99 Other (Specify) (F)

TORT

03 Motor Vehicle negligence-
 personal injury/property damage (F)
 04 Other negligence-personal
 injury/property damage (F)
 05 Products Liability (A)
 06 Malpractice-medical (A)
 07 Malpractice-other(Specify) (A)
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 15 Defamation (Libel-Slander) (A)
 19 Asbestos (A)
 20 Personal Injury-Slip&Fall (F)
 21 Environmental (A)
 22 Employment Discrimination (F)
 99 Other (Specify) (F)

REAL PROPERTY

C01 Land taking (eminent domain) (F)
 C02 Zoning Appeal, G.L. c.40A (F)
 C03 Dispute concerning title (F)
 C04 Foreclosure of mortgage (X)
 C05 Condominium lien and charges (X)
 C99 Other (Specify) (F)

EQUITABLE REMEDIES

D01 Specific performance of contract (A)
 D02 Reach and Apply (F)
 D06 Contribution or Indemnification (F)
 D07 Imposition of Trust (A)
 D08 Minority Stockholder's Suit (A)
 D10 Accounting (A)
 D12 Dissolution of Partnership (F)
 D13 Declaratory Judgment G.L.c.231A (A)
 D99 Other (Specify) (F)

MISCELLANEOUS

E02 Appeal from administrative (X)
 Agency G.L. c. 30A
 E03 Action against Commonwealth
 Municipality, G.L. c.258 (A)
 E05 All Arbitration (X)
 E07 c.112,s.12S (Mary Moe) (X)
 E08 Appointment of Receiver (X)
 E09 General contractor bond,
 G.L. c.149,s.29,29a (A)
 E11 Workman's Compensation (X)
 E14 Chapter 123A Petition-SDP (X)
 E15 Abuse Petition, G.L.c.209A (X)
 E16 Auto Surcharge Appeal (X)
 E17 Civil Rights Act, G.L.c.12,s.11H (A)
 E18 Foreign Discovery proceeding (X)
 E96 Prisoner Cases (F)
 E97 Prisoner Habeas Corpus (X)
 E99 Other (Specify) (X)

TRANSFER YOUR SELECTION TO THE FACE SHEET.

EXAMPLE:

CODE NO.	TYPE OF ACTION (SPECIFY)	TRACK	IS THIS A JURY CASE?
B03	Motor Vehicle Negligence-Personal Injury	(F)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

SUPERIOR COURT RULE 29

STATEMENT OF THE PLAINTIFF. The plaintiff or his/her counsel shall set forth, on the face sheet (or attach additional sheets as necessary), a statement specifying in full and itemized detail the facts upon which the plaintiff then relies as constituting money damages. A copy of such civil action cover sheet, including the statement as to the damages, shall be served on the defendant together with the complaint. If a statement of money damages, where appropriate is not filed, the Clerk-Magistrate shall transfer the action as provided in Rule 29(5)(C).

STATEMENT OF THE DEFENDANT. Should the defendant believe the statement of damages filed by the plaintiff in any respect inadequate, he or his counsel may file with the answer a statement specifying in reasonable detail the potential damages which may result should the plaintiff prevail. Such statement, if any, shall be served with the answer.

A CIVIL ACTION COVER SHEET MUST BE FILED WITH EACH COMPLAINT, BUFF COLOR PAPER.

24 6 A 92 AM 5007
 2005 MAY 26 4:42
**FAILURE TO COMPLETE THIS COVER SHEET THOROUGHLY AND ACCURATELY
 MAY RESULT IN DISMISSAL OF THIS ACTION.**

HAMPDEN COUNTY
 SUPERIOR COURT
 CLERKS OFFICE

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

HAMPDEN COUNTY SUPERIOR COURT DEPARTMENT
SUPERIOR COURT CIVIL ACTION NO: 05 462
FILED

JUN 20 2005

STEVEN J. MALKE,
Plaintiff

Marie E. Magg
CLERK-MAGISTRATE

v.

TRANSCONTINENTAL REFRIGERATED
LINES, INC.,
Defendant

AFFIDAVIT OF SERVICE OF
PROCESS

NOW COMES John D. Ross, III, Esquire, Attorney for the Plaintiff in the above-entitled matter and in accordance with M.G.L. Chapter 233A, section 6(a)(3) and M.R.C.P. Rule 4(e) and (f) on oath does depose and say:

On April 28, 2005, a Complaint in the above-entitled matter was filed in the Hampden Superior Court and a copy of the within named Complaint and Summons were served on the Defendant, Transcontinental Refrigerated Lines, Inc., by mailing same, certified mail, return receipt requested on June 10, 2005.

Said return receipt is attached hereto.

A true copy:

Attest:

Shirley Coyne
deputy **Assistant Clerk**

John D. Ross, III
John D. Ross, III, ESQ.
121 State Street
Springfield, MA 01103
Tel: (413) 736-2725
Fax: (413) 736-1247
BBO #546211

Dated: June 16, 2005

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

SPRINGFIELD, MA
June 16, 2005

THEN PERSONALLY APPEARED, the above-named John D. Ross, III, ESQ., and made oath that the foregoing is true to the best of his knowledge and belief, before me.

Rachel A. Montemagni
Notary Public
Commonwealth of Massachusetts
My Commission Expires
January 16, 2009

Rachel A. Montemagni
Notary Public
My Commission Expires: 1/16/09

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

SUPERIOR COURT
DEPARTMENT OF THE TRIAL COURT
CIVIL ACTION
NO. 05 462

STEVEN J. MALKE

PLAINTIFF(S)

V.

TRANSCONTINENTAL REFRIGERATED
LINES, INC.,

DEFENDANT(S)

SUMMONS

You are hereby summoned and required to serve upon To the above named defendant: TRANSCONTINENTAL REFRIGERATED LINES, INC.
JOHN D. ROSS, III. ESQUIRE
121 State Street, Springfield, Ma 01103, plaintiff's attorney, whose address is
you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do
so, judgment by default will be taken against you for the relief demanded in the complaint. You are also
required to file your answer to the complaint in the office of the Clerk of this court at Springfield either before
service upon the plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by rule 13(a), your answer must state as a counterclaim any claim which
you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter
of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

Witness, Suzanne V. DeVecchio, Esq., at Springfield the 10th
JUNE in the year of our Lord two thousand ~~th~~ five day of

Francis G. Magza
Clerk / Magistrate

NOTES:

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all such defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.

PROOF OF SERVICE OF PROCESS

I hereby certify and return that on _____, 2003, I served a copy of the within summons, together with a copy of the original complaint, in this action, upon the within named defendant, in the following manner (See Mass. R. Civ. P. 4 (d)(1-5):

Dated: _____, 2003

N.B. TO PROCESS SERVER:

PLEASE PLACE DATE YOU MAKE SERVICE ON DEFENDANT IN THIS BOX ON THE ORIGINAL AND ON THE COPY SERVED ON DEFENDANT.

(_____)
(_____, 2003)
(_____)

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p><i>[Signature]</i></p>	
<p>1. Article Addressed to:</p> <p><i>Transcontinental Refrigerated Lines, Inc.</i> <i>Attention: Manager/Person in Charge</i> <i>130 Armstrong Road</i> <i>Pittston, PA 18640</i></p>		<p>B. Received by (Printed Name) <input checked="" type="checkbox"/> C. Date of Delivery <i>6-13-05</i></p> <p><i>[Signature]</i></p>	
		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>2. Article Number (Transfer from service label)</p>		<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
		<p>7002 0510 0001 0799 3693</p>	

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 05-462

STEVEN J. MALKE
Plaintiff,

v.

TRANSCONTINENTAL REFRIGERATED LINES, INC.
Defendants.

HAMPDEN COUNTY
SUPERIOR COURT
FILED
JUN 23 2005
Marie S. Magg
CLERK-MAGISTRATE

**DEFENDANT, TRANSCONTINENTAL REFRIGERATED LINES, INC.'S ANSWER
AND JURY CLAIM**

Defendant, Transcontinental Refrigerated Lines, Inc. answers the plaintiffs' Complaint and Demand for Jury Trial as follows:

1. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 1.
2. The defendant denies the allegations of Paragraph 2.
3. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 3.
4. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 4.
5. The defendant denies the allegations of Paragraph 5.
6. The defendant denies the allegations of Paragraph 6.

FIRST AFFIRMATIVE DEFENSE

The plaintiff's damage or injury was caused by the plaintiff's violation of law, statute or other regulation enacted to govern the conduct of the parties at the time and place of the alleged accident.

SECOND AFFIRMATIVE DEFENSE

The plaintiff's recovery for pain and suffering is barred by the provisions of Mass. G.L. c. 231, §6D.

THIRD AFFIRMATIVE DEFENSE

The plaintiff has failed to mitigate, minimize or avoid damages, if any, alleged in the plaintiff's complaint, accordingly, any recovery must be reduced by the amount of damage resulting from such failure.

FOURTH AFFIRMATIVE DEFENSE

The complaint fails to state a claim against the defendants upon which relief can be granted and therefore, the Complaint should be dismissed pursuant to Mass. R. Civ. P. 12(b)(6).

FIFTH AFFIRMATIVE DEFENSE

The Complaint should be dismissed for insufficiency of process.

SIXTH AFFIRMATIVE DEFENSE

The Complaint should be dismissed for insufficiency of service of process.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff was comparatively negligent in causing his injuries and the negligence of the plaintiff was greater than that of defendant and the recovery of the plaintiff is thereby barred.

EIGHTH AFFIRMATIVE DEFENSE

If Plaintiff is entitled to recover against the defendant, any such recovery must be reduced in accordance with the comparative negligence statute, G.L. c. 231, sec. 85 since the negligence of the plaintiff was the proximate cause of the injuries allegedly sustained.

NINTH AFFIRMATIVE DEFENSE

The complaint should be dismissed pursuant to Mass. R. Civ. P. 12(b)(3) for improper venue.

TENTH AFFIRMATIVE DEFENSE

The harm, if any, suffered by plaintiff was caused by one for whose conduct defendant is not legally responsible and plaintiff's recovery is thereby barred.

ELEVENTH AFFIRMATIVE DEFENSE

The plaintiff has been fully and completely compensated and is not entitled to recover any damages from the defendant.

TWELFTH AFFIRMATIVE DEFENSE

The defendant has not been tendered timely and adequate notice as required by law and the plaintiff's recovery is thereby barred.

THIRTEENTH AFFIRMATIVE DEFENSE

The Complaint should be dismissed for lack of personal jurisdiction over the defendant.

FOURTEENTH AFFIRMATIVE DEFENSE

The defendant is exempt from liability pursuant to Mass. G.L. c. 90 §34M.

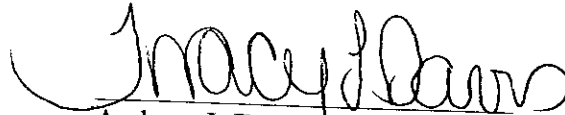
FIFTEENTH AFFIRMATIVE DEFENSE

The defendant is exempt from liability to the plaintiff to the extent provided by Chapter 670, acts of 1970, as amended.

JURY CLAIM

The defendant claims a trial by jury as to all issues and claims.

Transcontinental Refrigerated Lines, Inc.
By its attorneys



Andrew J. Fay (BBO# 5500058)

Tracy L. Davis (BBO# 641440)

TOBIN, SULLIVAN, FAY & GRUNEBAUM

Wellesley Office Park

60 William Street

Wellesley, MA 02481

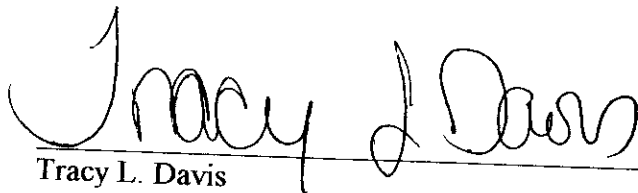
(781)237-0877

Dated: June 22, 2005

CERTIFICATE OF SERVICE

I, Tracy L. Davis, certify that a copy of the foregoing document was served via first class mail, postage prepaid, and via facsimile to counsel of record as follows:

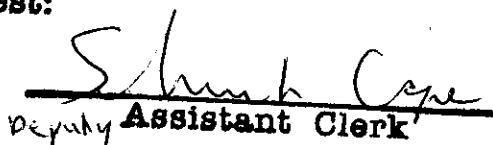
John D. Ross, III, Esq.
121 State Street, Suite 201
Springfield, MA 01103


Tracy L. Davis

Dated: June 22, 2005

A true copy:

Attest:


Deputy Assistant Clerk